

ADMINISTRATIVE - INTERNAL USE ONLY

OGC 76-6241

9 November 1976

MEMORANDUM FOR: Deputy Director for Administration
FROM: General Counsel
SUBJECT: Use of Academicians As Guest Speakers

OGC Has Reviewed

1. This is in response to your memorandum of 23 September 1976 requesting my concurrence in your determination that the Office of Training (OTR) should not be required to seek assurances from professors or other academic personnel who lecture in training courses that they have advised the appropriate higher officials of their educational institutions of their Agency affiliation. In support of your determination, you have cited both the additional administrative burden which would be entailed in securing such assurances and also OTR's view that, if this requirement is imposed, scholars with whom it is associated "not only will be antagonized, but may develop unfavorable views toward the Agency or even refuse an invitation to speak."

2. As you recognize in your memorandum, the Agency procedures at issue in this matter are set out in internal guidelines promulgated as a result of the recommendations contained in the Katzenbach Report of 1967. Under these guidelines, which were formulated by the Director of Personnel and approved by the DCI on 12 July 1967, personal services contracts with staff members of educational institutions are generally made only after the staff member has assured the Agency that a senior official of the institution concerned has been made aware of the proposed relationship. As you know, section 4(b)(9) of Executive Order 11905 (18 February 1976) has subsequently established parallel procedures for Agency contracts with academic institutions themselves by authorizing CIA to enter into such arrangements with scholastic institutions, provided that in all cases Agency sponsorship is known to the appropriate senior officials of those institutions.

3. Your memorandum essentially sets out two alternative arguments to buttress your position that academic personnel with whom OTR has relationships should not be held to the 12 July 1967 guidelines. First, you note that the guidelines were "attached to a memorandum approved by the Director - not in the form of a duly authenticated Headquarters Regulation," thus making "the status of this form of policy statement

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different from a regulatory issuance...." Secondly, you argue that the guidelines themselves may be interpreted to allow the Deputy Director for Support (now the Deputy Director for Administration) sufficient flexibility in certain situations to waive the general requirement for a CIA-affiliated professor to so notify higher authorities of his academic institution. Each of these arguments will be briefly analyzed below.

4. While it is true that the guidelines in question have never been formally promulgated as Headquarters Regulations, the fact remains that they continue to be followed as the applicable Agency-wide policy in our dealings with staff members of American universities. The guidelines have traditionally been applied to academicians who serve as Agency consultants and contract employees and, most recently, this Office has reaffirmed to IC Staff that it must receive the requisite assurances from those academicians serving IC as consultants, panelists, etc. Accordingly, since your memorandum concedes that OTR enters into "contracts" with such individuals, it is clear that the guidelines are in continuing force at the present time and must be followed by OTR in its dealings with academicians. However, with respect to your second argument as outlined in the preceding paragraph, we agree that the guidelines provide for an exception to the general requirement for a staff member of an educational institution to report his Agency affiliation to higher officials of his institution. In fact, in an 11 September 1967 memorandum from the Director of Personnel to the Legislative Counsel which amplified on the 12 July 1967 guidelines, it was specifically stated that if any Agency component "propose[s] to hire an individual by contract without the knowledge of the institution or over its objection, the request must first be approved by the Deputy Director for Support. If [the component] and he cannot reach agreement, the matter would then be referred to the Executive Director-Comptroller or the DDCI for final decision."

5. Thus, there exists clear authority in support of your general view that you may waive the general requirements of the 12 July 1967 guidelines. The difficulty we have with your memorandum, however, lies in your position that you may use this waiver in a "blanket" fashion to cover all academics used by OTR without any attempt having first been made to contact each individual to gauge his or her feelings on advising an appropriate university official of the person's CIA affiliation. This Office appreciates and sympathizes with OTR's concerns, but it is respectfully suggested that at this point its assessment of the academicians' reaction is at least speculative and perhaps overly pessimistic. In this latter regard, it should be mentioned that the great majority of such individuals presently used as Agency consultants and contract employees willingly and without incident have notified their university superiors of their connections with the Agency.

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6. Accordingly, since this Office has concluded that the 12 July 1967 guidelines both remain in force and contain the general requirement that an academician disclose his Agency affiliation to an official of his educational institution, I cannot concur in your determination in its present form. On the other hand, if in a specific case either OTR or the academician involved expresses a particular reluctance for such a disclosure to be made, you as the DDA may expressly approve a waiver of this general requirement. As a final note, this Office recognizes that the general Agency policy in this area is presently in a certain degree of flux. Indeed, you may be aware that DDI has drafted and circulated a revised set of procedures concerning CIA and its relations with academic institutions and their employees. These procedures would provide, in part, that "[w]hen the CIA initiates a relationship with an academician, it will not use any form of 'cover'. Whether the relationship is to continue on a public or confidential basis will be determined by the academician and the CIA together. In either case, the decision to inform the head of the institution where he or she is employed will be left to the scholar...." If ultimately adopted by the DCI, these proposed procedures would effectively supersede the 12 July 1967 guidelines and would modify our existing practices in such a way as to largely take care of or at least ease the concerns expressed by OTR. There may be other acceptable modifications that would have the same effect. Nevertheless, we believe that in the meantime OTR should adhere to the existing guidelines and procedures as set forth in this memorandum.



Anthony A. Lapham

STATINTL

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DDA Remarks: "Harry, You ask a question--you get an answer! Let me have your reaction. /s/Jack Blake"

Att: DDA 76-5591 Memo to DDA fr OGC, dtd 9 Nov 1976; Subj: Use of Academicians as Guest Speakers.

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DDA:JFBlake:der (12 November 1976)